

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

05-16-12 WGY

CIVIL ACTION NUMBER: 05-16-12 WGY

STEVEN DEARBORN, pro se,  
Plaintiff

MAGISTRATE JUDGE *[Signature]*

Vs.

COMMISSIONER OF  
CORRECTIONS, BARNSTABLE  
COUNTY COMMISSIONERS,  
BARNSTABLE COUNTY SHERIFF  
AND BARNSTABLE COUNTY  
HOUSE OF CORRECTIONS  
SUPERINTENDENT,  
Defendants

RECEIVED *4/1/05*  
AMOUNT \$250  
SUMMONS ISSUED *N/A*  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY *[Signature]*  
*4/1/05*

DEFENDANTS, BARNSTABLE COUNTY COMMISSIONERS,  
BARNSTABLE COUNTY SHERIFF AND BARNSTABLE  
COUNTY HOUSE OF CORRECTIONS SUPERINTENDENT'S  
NOTICE OF REMOVAL

Defendants, Barnstable County Commissioners, Barnstable County  
Sheriff and Barnstable County House of Corrections Superintendent  
(hereinafter "Barnstable County Defendants") by their attorneys, hereby  
give notice that pursuant to 28 U.S.C. §§ 1441 and 1446 this action is  
removed to this Court from the Superior Court Department of the Trial

Court of the Commonwealth of Massachusetts in and for Suffolk County.

As grounds therefor, Defendants state that:

1. Steven Dearborn (hereinafter "Dearborn") is an inmate of the Barnstable County House of Correction and Jail.
2. On or about January 21, 2005, Dearborn filed a Complaint in Suffolk Superior Court seeking damages for mental distress, emotional distress, embarrassment, pain and suffering, which he allegedly suffered while incarcerated at the Jail and allegedly required to shower while in handcuffs.
3. This Complaint was served on the Barnstable County Defendants on March 8, 2005.
4. Dearborn's Complaint stated that the Defendants violated his rights under the Eight Amendment to the United States Constitution.
5. Dearborn's claim is governed by the Prison Litigation Reform Act, 42 U.S.C. §§ 1997e et seq..
6. Dearborn has failed to comply with and exhaust administrative remedies in accordance with the Prison Litigation Reform Act, 42 U.S.C. §§ 1997e et seq..

7. Section 1141 of Title 28 permits the removal of “any civil action brought in a State court of which the district courts of the United States have original jurisdiction. . . .”
8. Section 1141(b) provides that “Any action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution . . . of the United States shall be removable without regard to the citizenship or residence of the parties.”
9. Plaintiff’s complaint seeks relief under the United States Constitution and federal statutes and therefore, presents a question of which the District Court has original jurisdiction.
10. Plaintiff alleges a violation of his constitutional right against cruel unusual punishment, a claim that necessarily requires interpretation of federal constitutional law, and therefore, a federal question.
11. Furthermore, before the plaintiff may proceed with a civil lawsuit, he is required to exhaust all remedies available to him under Prison Litigation Reform Act, 42 U.S.C. §§ 1997e et seq..
12. The plaintiff contends that he has exhausted all of said remedies, however, the County Defendants have raised as an Affirmative Defense the plaintiff’s failure to exhaust all of the remedies available to him under Prison Litigation Reform Act, 42 U.S.C. §§

1997e et seq.. This will require an interpretation of federal law, and is therefore a federal question.

13. Since this Court has original jurisdiction of these claims pursuant to 28 U.S.C. § 1331, removal is proper under 28 U.S.C. §§ 1441 and 1446.
14. This Court has pendant jurisdiction over Dearborn's state law claims under 28 U.S.C. § 1441(c) and/or supplemental jurisdiction under 28 U.S.C. § 1367.
15. In accordance with 28 U.S.C. § 1446(a), copies of all documents served upon Defendants are attached hereto, as well as a copy of the County Defendants' Answer. Pursuant to Local Rule 81.1 attested copies of all of the pleadings and a certified copy of the docket sheet from the state court file shall be filed by the Defendants within thirty (30) days after the filing of this notice.

WHEREFORE, the defendants remove this action from the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts in and for Suffolk County to the United States District Court for the District of Massachusetts.

Respectfully submitted,  
For the Barnstable County  
Defendants,  
By their Attorney,



Robert S. Troy  
Robert S. Troy & Associates  
90 Route 6A  
Sandwich, MA 02563  
(508) 888-5700  
BBO#503160

DATED: March 31, 2005

# CERTIFICATE OF SERVICE

I, Robert S. Troy, do hereby certify that this day I served a true copy of the within Notice of Removal and Category Form by mailing same, first class mail, postage prepaid to:

Mr. Steven Dearborn, pro se  
#14676 K-POD #12  
600 Sheriff's Place  
Bourne, MA 02532



Robert S. Troy

Dated: March 31, 2005

LAW OFFICES  
ROBERT S. TROY  
SEXTANT HILL OFFICE PARK  
90 OLD KINGS HIGHWAY  
(ROUTE 6A)  
SANDWICH, MA  
02563-1866  
TEL. (508) 888-5700

p:\docs\bar\dearborn\certificate of service 032805.doc

# Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION

No. 05-0258-D

STEVEN DEARBORN (pro se), Plaintiff(s)

v.

BREWSTER COUNTY SHERIFF, Defendant(s)  
(JAMES CUMMINGS)

## SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon STEVEN DEARBORN  
#14676 K-POD #12

plaintiff ~~(James Cummings)~~ whose address is 6000 SHERIFFS PLACE BURLINGAME, MA 02532 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff ~~(James Cummings)~~ or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Barbara J. Rouse, J.

Witness, STEVEN DEARBORN, Esquire, at Boston, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord two thousand \_\_\_\_\_.

Michael Joseph Donovan  
Clerk/Magistrate

### NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED  
(1) TORT — (2) MOTOR VEHICLE TORT — (3) CONTRACT — (4) EQUITABLE RELIEF — (5) OTHER

50.  
**Commonwealth of Massachusetts  
County of Suffolk  
The Superior Court**

CIVIL DOCKET # SUCV2005-00258-D

RE: Dearborn, #14676 v Dennehy, Comr Massachusetts Department Corrections et al

TO: Steven Dearborn, #14676  
Barstable House of Correction  
6000 Sheriff's Place  
Buzzards Bay, MA 02532

**TRACKING ORDER - F TRACK**

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

<b><u>STAGES OF LITIGATION</u></b>	<b><u>DEADLINE</u></b>
Service of process made and return filed with the Court	04/21/2005
Response to the complaint filed (also see MRCP 12)	06/20/2005
All motions under MRCP 12, 19, and 20 filed	06/20/2005
All motions under MRCP 15 filed	06/20/2005
All discovery requests and depositions completed	11/17/2005
All motions under MRCP 56 served and heard	12/17/2005
Final pre-trial conference held and/or firm trial date set	01/16/2006
Case disposed	03/17/2006

**The final pre-trial deadline is not the scheduled date of the conference.** You will be notified of that date at a later time.

**Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**

This case is assigned to session "D" sitting in CtRm 1 - 12th fl., 90 Devonshire St., Boston Suffolk Superior Court.

Dated: 02/08/2005

Michael Joseph Donovan  
Clerk of the Court

Location: CtRm 1 - 12th fl., 90 Devonshire St., Boston  
Telephone: 617-788-8110

BY: Jane M. Mahon  
Assistant Clerk

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT  
Civil Action  
1:05-0258-L

STEVEN DEARBORN prose.  
PLAINTIFF,

V.

COMMISSIONER OF CORRECTIONS

BARNSTABLE COUNTY COMMISSIONERS

BARNSTABLE COUNTY SHERIFF

BARNSTABLE COUNTY HOUSE OF CORRECTION - SUPERINTENDENT  
DEFENDANTS.

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2005 JAN 21 P. 2:53  
MICHAEL JOSEPH DONOVAN  
CLERK/MAGISTRATE

COMPLAINT

PARTIES

- 1) PLAINTIFF STEVEN DEARBORN IS A MASSACHUSETTS PRISONER CURRENTLY CONFINED AT BARNSTABLE HOUSE OF CORRECTION, A FACILITY OPERATED BY THE BARNSTABLE COUNTY SHERIFF OFFICE AND IS LOCATED AT 6000 SHERIFFS' PLACE IN BARNSTABLE MASSACHUSETTS 02532.
- 2) DEFENDANT KATHLEEN DENNEHY IS THE COMMISSIONER OF MASSACHUSETTS DEPARTMENT OF CORRECTIONS WHO'S OFFICE IS LOCATED AT 50 MAPLE STREET SUITE #3 IN MILFORD, MASSACHUSETTS 01757-3698.
- 3) DEFENDANTS BARNSTABLE COUNTY COMMISSIONERS ARE LOCATED AT THE SUPERIOR COURT HOUSE ON 3195 MAIN STREET

MAR. 2. 2005 5:37PM

BCV

NO. 2527 P. 6

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT  
CIVIL ACTION  
No. 05-0258-1

## PARTIES (CONTINUED)

P.O. Box 427 in Barnstable, Massachusetts 02630.

4) DEFENDANT JAMES CUMMINGS IS THE SHERIFF OF BARNSTABLE COUNTY WHO'S OFFICE IS LOCATED AT 6000 SHERIFF PLACE IN BOURNE, MASSACHUSETTS 02532.

5) DEFENDANT MICHAEL REGAN IS THE SUPERINTENDENT OF BARNSTABLE HOUSE OF CORRECTION WHO'S OFFICE IS LOCATED AT 6000 SHERIFFS PLACE IN BOURNE, MASSACHUSETTS 02532.

## STATEMENT OF FACTS

6) ON NOVEMBER 15, 2004 WHILE IN THE CARE AND CUSTODY OF BARNSTABLE SHERIFFS' DEPARTMENT (HOUSE OF CORRECTION) PLAINTIFF BEGAN SERVING (30) DAYS IN THE SEGREGATION UNIT "POD-F" FOR DISCIPLINARY INFRACTIONS

7) DURING THE DURATION OF HIS (30) DAY SEGREGATION PERIOD, PLAINTIFF WAS ALLOWED TO SHOWER MONDAY THROUGH FRIDAY EACH WEEK DURING A (1) HOUR RECREATION PERIOD.

8) DURING EACH SHOWER PERIOD PLAINTIFF WAS PLACED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT  
Civil Action  
No. 05-0258-1

STATEMENT OF FACTS (CONT.)

INTO A SHOWER STALL AND SECURED BEHIND A METAL DOOR WHICH CAN ONLY BE UNLOCKED FROM THE OUTSIDE OF THE DOOR BY THE CORRECTIONAL OFFICER ASSIGNED TO THIS SEGREGATION UNIT. THEREFORE, THIS SHOWER STALL IS INESCAPABLE AND POSES NO SECURITY THREAT.

9) DURING EACH SHOWER PERIOD, FROM NOVEMBER 15, 2004 THROUGH DECEMBER 15, 2004, PLAINTIFF WAS FORCED TO BE HANDCUFFED DURING ALL SHOWER PERIODS.

10) ON NOVEMBER 17, 2004, PLAINTIFF FILED AN INMATE GRIEVANCE FORM PURSUANT TO CODE OF MASSACHUSETTS REGULATIONS TITLE 103:934.02, COMPLAINING OF THIS INHUMANE/PUNISHMENT OF BEING HANDCUFFED WHILE SHOWERING. (SEE EXHIBIT A)

11) ON NOVEMBER 19, 2004 PLAINTIFF RECEIVED A RESPONSE TO THIS GRIEVANCE FROM STAFF "MAJOR P. LUCAS" DENYING HIS REQUEST NOT TO BE HANDCUFFED WHILE SHOWERING (SEE EXHIBIT B). PLAINTIFF THEN APPEALED THIS DECISION TO THE SUPERINTENDENTS' OFFICE.

12) ON NOVEMBER 22, 2004, DEPUTY SUPERINTENDENT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT  
Civil Action  
No. 95-0258-D

STATEMENT OF FACTS (CONT.)

"BONAVIDA" CAME TO "POD-F" ISOLATION UNIT, TO RESPOND TO PLAINTIFF'S GRIEVANCE APPEAL. DEATH "BONAVIDA" PRODUCED PLAINTIFF'S APPEAL AND (VERBALLY) STATED REASONS FOR FURTHER DENYING PLAINTIFF'S GRIEVANCE AND ALSO WARNED PLAINTIFF, NOT TO CHALLENGE SUCH DENIAL OR THERE WOULD BE REPERCUSSION.

- 13) AT THAT POINT, PLAINTIFF HAD EXHAUSTED ALL ADMINISTRATIVE REMEDIES IN ACCORDANCE WITH THE PRISON LITIGATION REFORM ACT, 42 U.S.C. § 1997e AND M.G.L.C. 127, § 38F.

CLAIMS FOR RELIEF

- 14) PLAINTIFF INCORPORATES, BY REFERENCE, THE FACTS IN PARAGRAPHS 1-13 OF THIS COMPLAINT AS THOUGH FULLY SET FORTH HERE.
- 15) AS A DIRECT AND PROXIMATE RESULT OF THE ACTS OF ALL THE DEFENDANTS, SEPARATELY ACTING UNDER COLOR OF LAW, PLAINTIFF DID SUFFER EMOTIONAL DISTRESS, PAIN AND SUFFERING, AND MENTAL ANGUISH AND EMBARASSMENT OF SUCH NATURE THAT NO REASONABLE PERSON

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY, SS.

SUPERIOR COURT  
CIVIL ACTION  
No. 05-0258-D

CLAIMS FOR RELIEF (CONT.)

COULD OR SHOULD BE EXPECTED TO ENDURE, AND THE AFOREMENTIONED DEFENDANTS KNEW, OR SHOULD HAVE KNOWN, THAT THEIR ACTIONS WOULD CAUSE SUCH DISTRESS, PAIN AND SUFFERING, ANGUISH AND EMBARRASSMENT.

16) THE FACTS SET FORTH HEREIN VIOLATE PLAINTIFFS RIGHTS UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND UNDER THE MASSACHUSETTS DECLARATION OF RIGHTS (ART. 27) THE DEFENDANTS ACTIONS DO NOT "COMPORT WITH THE EVOLVING STANDARDS OF DECENTY AS A MATURING SOCIETY."

17) FURTHERMORE, IF FOLLOWED THROUGH WITH, THE POSSIBLE FURTHER ACTIONS OF THE DEFENDANTS, IN PARAGRAPH \*12, WOULD VIOLATE PLAINTIFFS RIGHTS UNDER CODE OF MASSACHUSETTS REGULATIONS, TITLE 103:934.01: INMATE RIGHTS (REQUIRED) . . . . . "INMATES SEEKING JUDICIAL OR ADMINISTRATIVE REDRESS, SHALL NOT BE PUNISHED OR SUBJECTED TO REPRISALS, OR PENALTIES, AS A CONSEQUENCE."

18) THE FACTS SET FORTH IN THIS COMPLAINT VIOLATE PLAINTIFFS RIGHTS UNDER FEDERAL AND STATE LAW.

MAR. 8. 2005 5:39PM

BCV. 7

NO. 2527 P. 10

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK County, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 95-0258-1)

## PRAYERS FOR RELIEF

- 19) GRANT SUCH EQUITABLE, PUNITIVE, INJUNCTIVE RELIEF, AS MAY BE AVAILABLE, AND JUST AND PROPER.
- 20) GRANT DAMAGES IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS (\$100,000).
- 21) GRANT SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS JUST AND PROPER.

RESPECTFULLY SUBMITTED,

Steven Dearborn

STEVEN DEARBORN

#14676 (B.S.O.)

6000 SHERIFFS' PLAZA

BORNE, MA

02532

DATE: 1/14/05

MAR. 8. 2005 5:39PM BC (SHACK DINE 4100)

NO. 2527 P. 11

BARNSTABLE COUNTY SHERIFF'S OFFICE / CORRECTIONAL FACILITY  
INMATE GRIEVANCE FORM

Instructions for completion: (1) Print or write legibly; provide all requested information; sign and date this form. (2) Each form will contain only one grievance. (3) A grievance will not be filed by a group or on behalf of a group of inmates. (4) Forward this form to your Unit Officer/Corrections Officer, who will forward it to the Facility Shift Supervisor if not resolved. (5) All grievances must be submitted within (10) ten working days of the incident.

## INMATE SECTION

NAME: STEVEN DEARBORN MSA#: 0014676 UNIT: F ROOM#: 5  
UNIT OFFICER: FLANAGAN DATE OF OCCURRENCE/INCIDENT: 11/15/04

BRIEF STATEMENT OF FACTS: I'm entitled by law to have unlimited access to courts and public officials. Presently my rights are being violated. I'm being denied "due process" by being limited to the times I'm allowed to write and correspond with private and public persons on the outside. My legal work was taken from me. I'm not allowed to purchase stamps, envelopes and paper and writing utensils while in segregation which is against the law of the Commonwealth of Massachusetts and Federal law.  
REMEDY REQUESTED: I need my information copied from my former - RICHARD'S BOOK. I need to have my legal work returned to me and I need to purchase the allowed stationery and writing materials and supplies. and I should not be handcuffed while trying to shower. I'm a member of ARTICLE 27 VIOLATIONS.  
HAVE YOU TALKED WITH YOUR UNIT OFFICER? ☒ YES ☐ NO

HAVE YOU TALKED WITH ANYONE ELSE? ☐ YES ☐ NO

IF YES, WITH WHOM?

WHEN? Yesterday

RESULTS: They tell me that there are only following the rules that they were told to enforce. I'm supposed to be allowed stationery products and legal supplies to correspond. I'm currently working in civil due process and this institution is preventing me from meeting deadlines and limiting my accessibility to the SUFFOLK SUPERIOR COURT. I need to receive legal materials to write and file motions unlimited.

INMATE SIGNATURE: Steven Dearborn DATE: 11/17/04

## UNIT MANAGER / FACILITY SHIFT SUPERVISOR SECTION

☒ FORM REJECTED. Returned to Inmate for the following reason(s): you are allowed these simple requests you are writing. I will speak with you about this matter today. 11/18/04

UNIT MANAGER / SUPERVISOR NAME: Det. Peter M. Montano

Please Read back page 11

MAR. 8. 2005, 5:39PM, BCC,  
- 171511 B

NO. 2527 P. 12

11/19/04  
Pmm**GRIEVANCE REVIEW FORM.....**

INMATE STEVEN DEARBORN MSA#0014676

RESPONSE FROM: ADS.P.LUCAS UNIT MANAGER LT.P.M.MONTEIRO

- 1) PEN, PAPER AND ENVELOPES WILL BE SUPPLIED TO YOU FROM THE UNIT OFFICER FOR LEGAL AND GENERAL CORRESPONDENCE.
- 2) LAW LIBRARY ACCESS WILL BE GRANTED DURING YOUR (1) HR RECREATION PERIOD AND ONLY AT THIS TIME.
- 3) YOU WILL REMAIN HANDCUFFED DURING YOUR SHOWER AS PER OUR POLICY AND YOU WILL BE PLACED IN LEG RESTRAINTS WHEN YOU ARE OUT OF YOUR CELL.
- 4) YOU MAY ORDER CANTEEN WHEN AND IF YOU SERVE YOUR D/ISO TIME AND YOU ARE SEEN BY CLASSIFICATION AND MOVED TO THE AD-SEG UNIT (POD-G).
- 5) YOUR RIGHTS HAVE NOT BEEN VIOLATED IN ANY WAY SHAPE OR FORM DURING YOUR INCARCERATION AT THE (BCCF). YOUR BEHAVIOR HAS PUT YOU IN A POSITION THAT LIMITS YOU FROM OBTAINING WHAT YOU NEED TO GET DONE WITH YOUR LEGAL MATTERS.
- 6) PER OUR POLICY YOUR GRIEVANCE HAS BEEN LOGGED AND FILED AND YOU HAVE RECEIVED A COPY OF OUR RESPONSE, AS I AM SURE YOU KNOW YOU MAY APPEAL MY DECISION TO THE DEPUTY SUPERINTENDANT.

~~RETURN THIS~~  
~~AND MY 3 pages of appeal~~  
~~please~~

*[Signature]*

7)

~~MSA 0014676~~

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court  
C.A. No. 05-0258

STEVEN DEARBORN, pro se, )  
Plaintiff )

Vs. )

COMMISSIONER OF )  
CORRECTIONS, BARNSTABLE )  
COUNTY COMMISSIONERS, )  
BARNSTABLE COUNTY SHERIFF )  
AND BARNSTABLE COUNTY )  
HOUSE OF CORRECTIONS )  
SUPERINTENDENT, )  
Defendants )

**NOTICE OF APPEARANCE**

Now comes Robert S. Troy and respectfully enters his appearance on behalf of the Defendants, Barnstable County Commissioners, Barnstable County Sheriff's Department and Barnstable County House of Corrections Superintendent, with regard to the above-captioned action.

Respectfully submitted,

*Robert S. Troy*

Robert S. Troy  
BBO#503160  
90 Route 6A  
Sandwich, MA 02563  
(508) 888-5700

DATED: March 24, 2005

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court  
C.A. No. 05-0258

STEVEN DEARBORN, pro se, )  
Plaintiff )

Vs. )

COMMISSIONER OF )  
CORRECTIONS, BARNSTABLE )  
COUNTY COMMISSIONERS, )  
BARNSTABLE COUNTY SHERIFF )  
AND BARNSTABLE COUNTY )  
HOUSE OF CORRECTIONS )  
SUPERINTENDENT, )  
Defendants )

**ANSWER OF THE DEFENDANTS, BARNSTABLE**  
**COUNTY COMMISSIONERS, BARNSTABLE COUNTY**  
**SHERIFF, AND BARNSTABLE COUNTY HOUSE OF**  
**CORRECTIONS SUPERINTENDENT**

Now come the Defendants, Barnstable County Commissioners,  
Barnstable County Sheriff, and Barnstable County House of Corrections  
Superintendent, and respectfully answers Plaintiff's Complaint as  
follows:

1. The Defendants admit the allegations contained in Paragraph 1 of Plaintiff's Complaint.
2. The allegations set forth in Paragraph 2 of Plaintiff's Complaint do not pertain to the Defendants and, consequently, no response is required. To the extent any of the allegations set forth in Paragraph 2 relate to the Defendants, the Defendants deny same.
3. The Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of Plaintiff's Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.
6. The Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.
7. The Defendants admit the allegations contained in Paragraph 7 of Plaintiff's Complaint, but note that there are sometimes exceptions to this policy.
8. The Defendants deny the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. The Defendants deny the allegations contained in Paragraph 9 of Plaintiff's Complaint.
10. The Defendants admit that the Plaintiff filed an Inmate Grievance Form, but deny that he was subject to inhumane punishment.
11. The Defendants admit the allegations contained in Paragraph 11 of Plaintiff's Complaint.
12. The Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Complaint.
13. The Defendants deny the allegations contained in Paragraph 13 of Plaintiff's Complaint.
14. The Defendants reassert their responses to Paragraphs 1 through 13 above.
15. The Defendants deny the allegations contained in Paragraph 15 of Plaintiff's Complaint.
16. The Defendants deny the allegations contained in Paragraph 16 of Plaintiff's Complaint.
17. The Defendants deny the allegations contained in Paragraph 17 of Plaintiff's Complaint.
18. The Defendants deny the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Paragraph 19 contains the Plaintiff's Prayer for Relief,  
consequently, no response is required. To the extent a response is  
required, the Defendants deny same
20. Paragraph 20 contains the Plaintiff's Prayer for Relief,  
consequently, no response is required. To the extent a response is  
required, the Defendants deny same
21. Paragraph 21 contains the Plaintiff's Prayer for Relief,  
consequently, no response is required. To the extent a response is  
required, the Defendants deny same

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

The Plaintiff's Complaint should be dismissed for lack of  
Sufficient Process.

#### **SECOND DEFENSE**

The Plaintiff's Complaint should be dismissed for Insufficient  
Service of Process.

THIRD DEFENSE

Plaintiff has failed to state a claim for which relief may be granted.

FOURTH DEFENSE

The Plaintiff's action is barred by the Statute of Limitations.

FIFTH DEFENSE

The Plaintiff's cause of action under 42 USC Section 1983 is barred by the failure of the Plaintiff to show a pattern, custom or habit of the Defendants which denied the Plaintiff his constitutional rights.

SIXTH DEFENSE

The Defendants are immune from liability because their conduct does not establish any clear denial of constitutional or statutory rights which a reasonable person should have known.

SEVENTH DEFENSE

The Defendants acted in good faith at all times and acted in accordance with all applicable statutes, rules and regulations and are therefore immune from liability.

EIGHTH DEFENSE

The Plaintiff's claims against the Defendants are barred by the Doctrine of Qualified Immunity.

NINTH DEFENSE

The Plaintiff cannot recover against the Defendants because the Defendants did not act with deliberate indifference to any of the Plaintiff's alleged constitutional rights.

TENTH DEFENSE

The Defendants are immune from liability because the alleged claim involves a judicial, legislative or executive act.

ELEVENTH DEFENSE

At the time of the alleged complaint, the Defendants were acting in their capacity as public officials and therefore, Plaintiff's recovery is barred or limited in accordance with M.G.L. c. 258.

TWELFTH DEFENSE

Plaintiff has failed to meet the statutory requirements for filing suit under the Massachusetts Tort Claims Act.

THIRTEENTH DEFENSE

Plaintiff's Complaint must be dismissed because Plaintiff has failed to name the Defendants properly and/or to name the real parties in interest.

FOURTEENTH DEFENSE

Plaintiff's claim must be dismissed because Plaintiff has failed to comply with and exhaust administrative remedies in accordance with the Prison Litigation Reform Act, 42 U.S.C. §§ 1997e et seq..

FIFTEENTH DEFENSE

Plaintiff's Complaint is generally barred by the provisions of the Prison Reform Act and must be dismissed.

SIXTEENTH DEFENSE

Plaintiff's claim must be dismissed because Plaintiff has failed to comply with and exhaust administrative remedies in accordance with M.G.L. c. 127 38E et. seq..

SEVENTEENTH DEFENSE

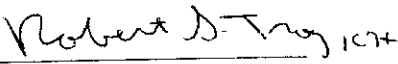
The Defendants are immune from liability as they were acting as government officials performing discretionary functions.

WHEREFORE, the Defendants, request this Honorable Court to:

- (1) dismiss the Plaintiff's Complaint;
- (2) award the Defendants costs and Attorney's fees;  
and
- (3) award any other such relief that this Court deems proper and just.

DEFENDANTS DEMAND A TRIAL BY JURY ON ALL  
ISSUES SO TRIABLE.

Respectfully submitted,  
For the Defendants,  
By their Attorney,

  
Robert S. Troy  
90 Route 6A  
Sandwich, MA 02563  
(508) 888-5700  
BBO#503160

DATED: March 24, 2005

✓

### CERTIFICATE OF SERVICE

I, Robert S. Troy, do hereby certify that this day I served a true copy of the within Notice of Appearance and Defendants' Answer by mailing same, first class mail, postage prepaid to:

Mr. Steven Dearborn, pro se  
#14676 K-POD #12  
600 Sheriff's Place  
Bourne, MA 02532

Robert S. Troy K It  
Robert S. Troy

Dated: March 24, 2005

LAW OFFICES  
ROBERT S. TROY  
EXTANT HILL OFFICE PARK  
90 OLD KINGS HIGHWAY  
(ROUTE 6A)  
SANDWICH, MA  
02563-1866  
TEL. (508) 888-5700

p:\docs\bar\dearborn\certificate of service.doc

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Steven Dearborn, pro se v. Commissioner of Correction
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also conform to AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court. n/a
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?  
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)  
YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?  
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?  
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).  
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?  
Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)  
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert S. TroyADDRESS 90 Route 6A Sandwich, MA 03563TELEPHONE NO. 508 888-5700

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Steven Dearborn, pro se

(b) County of Residence of First Listed Plaintiff Barnstable  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Barnstable County Commissioner  
Barnstable County Sheriff, Sup. Barnstable  
County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY) BARNSTABLENOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

Robert S. Tray  
90 Route 6A  
Sandwich, MA 02563

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |   |   |                                |                                |
|---|---|---|---|--------------------------------|--------------------------------|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 | DEF <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2                | <input type="checkbox"/> 2                | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input type="checkbox"/> 5     |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3                | <input type="checkbox"/> 3                | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6     |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>LABOR</b>	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input checked="" type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input checked="" type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

violation of prisoners rights

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

DATE

4-1-05

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_